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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,013	02/27/2002	Gianni Plicchi	P07543US00/RFH	3905
881	7590	05/03/2004	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			GETZOW, SCOTT M	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,013

Applicant(s)

PLICCHI ET AL.

Examiner

Scott M. Getzow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,5,7-19,24-28,30,31,49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimchi et al '123.

Kimchi teaches a catheter 22 which includes at least two sensors 22b, 22c. The catheter may be placed in the pulmonary artery or lung, as mentioned in column 4, lines 21-66, and column 14, lines 1-45. Further, the device can be used as part of an implantable pacemaker, as taught in column 5, lines 15-25. It is well known that modern day pacemakers have circuitry such as A-d converters, RAM, ROM, processor, filters, etc. which are all used to process signals produced from the device or sensed from the patient. ECG signals are commonly sensed using such pacemaker circuitry. Also, placing the sensors inside the catheter would have been obvious since the practitioner is assumed to know that sensors can be located inside as well as outside the catheter depending on which gives the more accurate signal.

3. Claims 6,20-23,29,32-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimchi et al '123 in view of Combs et al '861.

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To make the housing of the implanted device electroconductive, as shown by Combs, would have been obvious since it provides for more variety in sensing of the patient's signals. Further, Combs teach the use of an alarm, column 3, lines 61+, if certain edema thresholds are met. Still further, Combs teaches that posture and respiration should be taken into account when utilizing the device, column 5, lines 35-45.

4. Claims 3,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimchi et al '123 in view of Coppleson et al '350.

Coppleson teaches the use of both optical sensors and ultrasonic generators for diagnostic purposes, see column 1, lines 66+, and column 12, first paragraph. It would have been obvious to use such with the device of Kimchi since they have proven useful and effective in sensing conditions of various physical characteristics.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kimchi et al '123 in view of Nelson '299.

Nelson teaches the use of heat flow sensors in use with an implantable catheter. It would have been obvious to use such with device of Kimchi since such sensors have proven useful in determining, for example, whether an artery has a reduced diameter due to edema.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Scott M. Getzow
Primary Examiner
Art Unit 3762

smg